

Wage and Hour Division, Labor

§ 780.328

and on where the work is done. A determination of whether an employee is exempt therefore requires an examination of that employee's duties and where they are performed. Some employees of the employer may be exempt while others may not.

§ 780.324 Requirements for the exemption to apply.

(a) All the following conditions must be met in order for the exemption to apply to an employee:

- (1) He must be "engaged in agriculture";
- (2) Be "principally engaged";
- (3) On the "range", and
- (4) In the "production of livestock."

(b) Since the raising of livestock is included in the definition of agriculture under section 3(f) of the Act (see §§ 780.119-780.121 of subpart B of this part), the range production of livestock would normally be deemed agriculture work, and, consequently, an employee, during this time he is engaged in such activities, would meet the basic requirement of the exemption that he be "employed in agriculture."

The following sections discuss the meaning and application of the other requirements.

§ 780.325 Principally engaged.

(a) To determine whether an employee is "principally engaged" in the range production of livestock, one must consider the nature of his duties and responsibilities. To qualify for this exemption the primary duty and responsibility of a range employee must be to take care of the animals actively or to stand by in readiness for that purpose. A determination of whether an employee has range production of livestock as his primary duty must be based on all the facts in a particular case. The amount of time spent in the performance of the range production duties is a useful guide in determining whether this is the primary duty of the employee. In the ordinary case it will be considered that the primary duty means the major part, or over 50 percent, of the employee's time.

(b) Under this principle, an employee who spends more than 50 percent of his time during the year on the range in the duties designated as range produc-

tion duties would be exempt. This is true even though the employee may perform some activities not directly related to the range production of livestock, such as putting up hay or constructing dams or digging irrigation ditches.

§ 780.326 On the range.

(a) For purposes of this exemption, "range" is defined generally as land that is not cultivated. It is land that produces native forage for animal consumption, and includes land that is revegetated naturally or artificially to provide a forage cover that is managed like range vegetation. "Forage" as used here means "browse" or herbaceous food that is available to livestock or game animals.

(b) The range may be on private or Federal or State land, and need not be open. Typically it is not only noncultivated land, but land that is not suitable for cultivation because it is rocky, thin, semiarid, or otherwise poor. Typically, also, many acres of range land are required to graze one animal unit (five sheep or one cow) for 1 month. By its nature, range production of livestock is most typically conducted over wide expanses of land, such as thousands of acres.

§ 780.327 Production of livestock.

For an employee to be engaged in the production of livestock, he must be actively taking care of the animals or standing by in readiness for that purpose. Thus, such activities as herding, handling, transporting, feeding, watering, caring for, branding, tagging, protecting, or otherwise assisting in the raising of livestock and in such immediately incidental duties as inspecting and repairing fences, wells, and windmills would be considered as the production of livestock. On the other hand, such work as terracing, reseeding, haying, and constructing dams, wells, and irrigation ditches would not be considered as the production of livestock within the meaning of the exemption.

§ 780.328 Meaning of livestock.

The term "livestock" includes cattle, sheep, horses, goats, and other domestic animals ordinarily raised or used on